

Prepared by and
After Recording Return

To:

DOLLAR TREE STORES, INC.

500 VOLVO PARKWAY

CHESAPEAKE, VIRGINIA

23320

12452871

1/12/2017 10:51:00 AM \$27.00

Book - 10520 Pg - 560-568

Gary W. Ott

Recorder, Salt Lake County, UT

FOUNDERS TITLE

BY: eCASH, DEPUTY - EF 9 P.

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Nondisturbance and Attornment Agreement (this "Agreement") is made and entered into as of the 11 day of January 2017, by and between DOLLAR TREE STORES, INC., a Virginia corporation ("Tenant"), whose address is 500 Volvo Parkway, Chesapeake, Virginia 23320, and, FPA SANDY MALL ASSOCIATES, LLC, a Delaware limited liability company, its successors and assigns, ("Landlord"), whose address is c/o Trinity Property Consultants, LLC, 834 East 9400 South, Suite 54, Sandy, Utah 84094, and, MUTUAL OF OMAHA BANK, its successors and assigns, ("Lender"), whose address is 520 Post Oak Blvd., Suite 700, Houston, Texas 77027.

RECITALS

- A. The Tenant is the present tenant under a lease dated May 8, 1991, with FPA Sandy Mall Associates, LLC, as Landlord, known as Dollar Tree Store #02601, Sandy Mall, Sandy, Utah, (the "Premises"), to include First Amendment to Lease Agreement dated July 27, 1995, Commencement Certificate dated March 13, 1996, Second Amendment to Lease Agreement dated May 1, 2006, Third Amendment to Lease Agreement dated October 19, 2010, and Fourth Amendment to Lease Agreement dated November 3, 2015 (said documents, including amendments, being sometimes hereinafter referred to as the "Lease").
- B. Landlord has requested a loan from Lender (the "Loan") to be secured by a first priority mortgage and security agreement (the "Mortgage") covering the Premises and assignment of rents and leases (the "Assignment"). The Mortgage and Assignment, as the same may hereafter be amended (the consent of Tenant to which shall not be required) are referred to herein as the "Security Instruments." As one of the conditions to making the Loan to Landlord, Lender is requiring Tenant to execute this Agreement.
- C. The Landlord has requested that the Tenant subordinate the Lease and its interest in the Lease and its interest in the Premises in all respects to the Security Instruments.
- D. The Tenant has requested that Lender agree not to disturb the Tenant's possession of the Premises.
- E. Lender is relying upon the agreements contained in this instrument, without which it would not disburse or close the Loan.

NOW, THEREFORE, in consideration of the sum of \$1.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1. Subordination: Except as otherwise provided in this Agreement, the Lease is hereby subjected and subordinated to and shall remain in all respects and for all purposes subject, subordinate and junior to the Mortgage and all renewals modifications and extensions thereof.

2. Purchase Options. The Tenant's options or rights contained in said Lease to acquire title to the Premises, if any, including any rights of first refusal, are hereby made subject and subordinate to the rights of the Lender under the Mortgage and any acquisition of title to the Premises.

3. Tenant Not to be Disturbed: So long as Tenant is not in default (beyond any period under the Lease given to Tenant to cure such default) in the payment of rent to be paid under the Lease or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Tenant's possession of the Premises under all of the terms, covenants and conditions of the Lease and any extensions or renewals thereof which may be affected in accordance with any renewal rights therefore in the Lease, shall not be diminished or interfered with by Lender, and Tenant's occupancy of the Premises under all of the terms, covenants and conditions of the Lease shall not be disturbed by Lender during the term of the Lease or any such extensions or renewals thereof.

4. Tenant Not to be Joined in Foreclosure unless Required by Law: So long as Tenant is not in default beyond any period under the Lease given to Tenant to cure such default in the payment of rent to be paid under the Lease or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Lender will not name or join Tenant in any action or proceeding foreclosing the Mortgage unless such naming or joinder is necessary to foreclose the Mortgage and then only for such purpose and not for the purpose of terminating the Lease.

5. Tenant to Attorn to Lender; Lender Not Bound by Certain Acts:

a. If the interests of Landlord shall be transferred to and owned by Lender by reason of foreclosure or other proceedings brought by it in lieu of or pursuant to a foreclosure, or by any other manner and subject to the provisions of paragraph (b) below, Tenant and Lender shall be bound under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be affected in accordance with any option therefor in the Lease, with the same force and effect as if Lender were the landlord. The foregoing shall be self-operative immediately upon Lender succeeding to the interest of the Landlord under the Lease without the execution of any further instruments on the part of any of the parties hereto; provided, however, that Tenant shall be under no obligation to pay rent to Lender until Tenant receives written notice from Lender that it has elected to receive such rents. Landlord agrees to indemnify and hold Tenant harmless from and against all claims, expenses, costs, including reasonable attorneys' fees, losses and liabilities arising out of, or resulting from, Tenant's payment of rent to Lender. The respective rights and obligations of Tenant and Landlord upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as now set forth therein, it being the intention of the parties hereto for this purpose

to incorporate the Lease in this Agreement by reference with the same force and effect as if set forth at length herein.

b. If Lender should succeed to the interest of Landlord under the Lease, Lender shall not be (i), liable for any act or omission of any prior landlord, (ii) subject to any offsets or defenses which Tenant might have against any prior landlord except for credits and overpayments of common area maintenance charges, taxes and insurance, which are prorated and paid monthly, and are reconciled at the end of the calendar year, it being understood that Lender hereby agrees that to the extent that Tenant is due a credit for common area maintenance charges, taxes and insurance accrued prior to Lender's acquisition of the Shopping Center, Lender will be responsible for such credit, (iii) bound by any fixed monthly rent which Tenant might have paid for more than the current monthly installment, (iv) bound by any material amendment or modification of the economic terms of the Lease made without its consent, which consent shall not be unreasonably withheld and which shall be deemed given if Lender does not approve or reject the request for modification within thirty (30) days of receipt thereof, (v) liable for the return of any security deposit except to the extent actually received by Lender from Landlord or (vi) responsible for any obligation to initially construct the Premises but if Lender fails to do so upon request following Lender's succeeding to Landlord's interest in the Premises, Tenant may terminate the Lease. Notwithstanding anything to the contrary contained herein, Lender shall be liable for any repair, restoration, rebuilding or maintenance obligations of Landlord under the Lease that are ongoing at the time Lender succeeds to the interest of Landlord under the Lease so long as Lender has been provided notice of the event or occurrence giving rise to Landlord's obligation to repair, restore or rebuild the Premises, pursuant to Section 6 hereof.

6. Notice of Default: Tenant hereby agrees to give Lender simultaneous notice of any default by the Landlord under the Lease or any occurrence that would give rise to Tenant's right to exercise any remedies under the Lease, including the right to offset, reduce or abate rent or terminate the Lease and Lender shall have the same opportunity (but shall not be required) to cure provided to Lender in the Lease.

7. Assignment of Lease: Pursuant to the Assignment Landlord has assigned its interest in the rent and other payments due under the Lease to Lender as security for payment of the Loan. Provided Tenant has received a fully executed copy of this Agreement, Lender may, at its option, direct Tenant to make future payments of rents or other amounts due under the Lease directly to Lender. Upon written notification to that effect by Lender to Tenant, Landlord hereby authorizes and directs Tenant to, and Tenant agrees to, pay the rent and any payments due under the Lease to Lender. Notwithstanding the foregoing, neither the execution of the Assignment nor the exercise of Lender's right to receive the rents thereunder shall be deemed to diminish any obligations of Landlord under the Lease or impose any such obligations on Lender. Landlord agrees that Tenant may rely upon the written representation of Lender that it is entitled to receive the rents payable under the Lease and the payment of rent to Lender shall be binding upon Landlord, Lender and those claiming through or under them.

8. Successors and Assigns: This Agreement and each and every covenant, agreement and other provision hereof shall be binding upon the parties hereto and their successors and assigns and shall inure to the benefit of the Lender and its successors and assigns. As used herein, the words "successors and assigns" shall include the heirs, administrators and representatives of any natural person who is a party to this Agreement.

9. Choice of Law: This Agreement is made and executed under and in all respects is to be governed and construed in accordance with the laws of the State in which the Premises is situated.

10. Captions and Headings: The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as continuing or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neutral shall be freely interchangeable.

11. Fully Executed Document: The parties hereto agree that Tenant will have no obligations under this Agreement unless and until Tenant is provided with a fully executed copy of this Agreement.

12. Notices: Any notice required or permitted to be given under this Agreement must be given in writing to the respective address(es) of the parties stated in this Agreement and shall be deemed given and effective: (a) upon signed receipt if personally delivered to the stated address; or (b) upon signed receipt of a notice (or refusal to sign or accept such notice) sent by certified or registered mail, return receipt requested and postage prepaid; or (c) upon signed receipt of a notice (or refusal to sign or accept such notice) sent by a nationally recognized overnight courier that provides verification of receipt. Neither Landlord nor Lender shall mail or deliver any required notice or consent to the Premises and any notice or consent delivered to the Premises shall not be deemed to be proper notice or effective notice for purposes of this Agreement.

- i. Change of Address. Any party's address as shown in this Agreement may be changed from time to time by such party giving written notice to the other party of the new address.
- ii. Service of Process. Notwithstanding anything to the contrary in the Lease or applicable law, (a) service of process ("Service") related to any action or proceeding under this Agreement or related to the Premises shall not constitute valid Service upon Tenant if made by serving Tenant at the Premises, and (b) Service upon Tenant shall only be valid if such Service is served upon Tenant through Tenant's Registered Agent for such Service in the state in which the Shopping Center is located.

For purposes of notice, the addresses of the parties shall be as follows:

Each notice to Lender shall be addressed as follows:

MUTUAL OF OMAHA BANK
520 Post Oak Blvd., Suite 700
Houston, TX 77027

Each notice to Landlord shall be addressed as follows:

FPA SANDY MALL ASSOCIATES, LLC
c/o Trinity Property Consultants, LLC
834 East 9400 South, Suite 54
Sandy, UT 84094

Each notice to Tenant shall be addressed as follows:

DOLLAR TREE STORES, INC.
ATTN: Lease Administration Dept #02601
500 Volvo Parkway
Chesapeake, VA 23320

13. Limited Liability. Tenant shall look solely to Lender's interest in the Premises for recovery of any judgments or damages from Lender, its successors and assigns, and neither Lender nor its successors or assigns shall have any personal liability, directly or indirectly, under or in connection with the Lease or this Agreement or any amendment or amendments made at any time or times, heretofore or hereafter and Tenant hereby forever and irrevocably waives and releases any and all such personal liability. The limitation of liability provided in this paragraph is in addition to and not in limitation of any limitation on liability applicable to Lender its successors and assigns provided by law or by any other contract, agreement or instrument.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed as of the date first above written.

TENANT:
DOLLAR TREE STORES, INC.

By: Deborah E. Miller
Deborah E. Miller
Vice President, Assistant General Counsel/Real Estate
Date: 1-4-17
FEIN#: 54-1387365

STATE OF VIRGINIA, AT LARGE
CITY OF CHESAPEAKE, to-wit:

The foregoing document was acknowledged before me this 4th day of January, 2017, by Deborah E. Miller, Vice President, Assistant General Counsel/Real Estate of DOLLAR TREE STORES, INC., a Virginia corporation.

Beth Utter
Notary Public
My commission expires: 08/31/2020

(Notarial Seal)



LANDLORD:
FPA SANDY MAIL ASSOCIATES, LLC

By: [Signature]
Name: _____
Title: _____
Date: Michael B. Earl
FEIN#: Manager 1-6-17

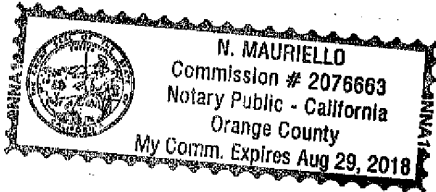
STATE OF CALIFORNIA,
CITY/COUNTY OF ORANGE, to-wit:

The foregoing document was acknowledged before me this 6 day of
January, 2017, by Michael B. Earl as
Manager of GF Sandy Mail, LLC for
FPA Sandy Mail Associates, LLC a DE LLC.

[Signature]

Notary Public
My commission expires: _____

(Notarial Seal)



(12)

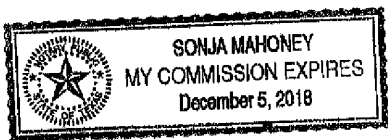
LENDER:

MUTUAL OF OMAHA BANK

By: Todd M. Fuller
Name: TODD M. FULLER
Title: SENIOR VICE PRESIDENT
Date: 1/9/2017
FEIN#: _____

STATE OF TEXAS,
CITY/COUNTY OF HARRIS, to-wit:

The foregoing document was acknowledged before me this 9 day of
JANUARY, 2017, by TODD M. FULLER as
SENIOR VICE PRESIDENT for
MUTUAL OF OMAHA BANK, a FINANCIAL INSTITUTION.



Sonja Mahoney
Notary Public
My commission expires: 12/5/2018

(Notarial Seal)

EXHIBIT "A"

Legal Description

1. Lots 1 and 8 of Sandy Mall Subdivision, according to the official plat recorded May 23, 2016 as Entry No. 12284382 in Book 2016P of Plats at Page 113, of the Official Records of Salt Lake County Utah.

TAX ID No. 28-08-101-063 (LOT 1)

TAX ID No. 28-08-101-070 (LOT 8)